

First 3 pages see...

**June 17th 1994 Prospective Changes
to Discontinuance Without Liability (Restructures)**

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: June 16, 1994

TARIFF F.C.C. NO. 2
9th Revised Page 61.19
Cancels 8th Revised Page 61.19
Effective: June 17, 1994

3.3.1.Q.2. Method of Determining Discount

2. Method of Determining Discount -

Example 1 - A Customer commits to an annual net revenue level of \$960,000 but exceeds that commitment by generating \$1,450,000 usage revenue during the second plan year. This example shows the total amount of the discount that the Customer would receive for the second year.

Term Plan Discount x Gross Annual Usage Rev.

Location A
MEGACOM 800 Service (23%) x \$250,000 = \$57,500
\$250,000 - \$57,500 = \$192,500

Location B
Basic 800 (23%) x \$875,000 = \$201,250 (minus \$.01 per minute
\$875,000 - \$201,250 = \$673,750 access line discount)

Location C
800 READYLINE (23%) x \$325,000 = \$74,750
\$325,000 - \$74,750 = \$250,250

Total net usage charges A+B+C = \$1,116,500
Total usage discounts = \$333,500

3. Penalty for Shortfalls - The Customer must meet the net annual revenue commitment after the discounts are applied. If a Customer does not meet the annual revenue commitment in any one year, after discounts are applied, the Customer must pay the difference between the Customer's actual billed revenue and the annual revenue commitment.

4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - The Customer may cancel or discontinue a CSTP II prior to the expiration of its term without liability when:

The Customer: 1) meets any of the conditions specified following, and 2) satisfies the pro-rated annual commitment of the CSTP II being terminated. If the Customer has not met the pro-rated annual commitment, the Customer must pay the difference between the actual billed revenue applicable to the annual revenue commitment (as specified in Section 3.3.1.Q., preceding), and the pro-rated annual commitment if the Customer terminates the existing CSTP II without liability.

The pro-rated annual commitment is the annual revenue commitment divided by 12 and multiplied by the number of full months elapsed in the current plan year.

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* Material filed under Transmittal No. 8706 is deferred to June 17, 1994.
y Issued on not less than one day's notice under authority of Special Commission No. 94-789
Certain material previously found on this page can now be found on Page 61.19.1.

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Adm. Rates and Tariffs
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ONLY APPLIES

TARIFF F.C.C. NO. 2
7th Revised Page 61.19.1
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All material on this page is ~~re~~ issued except as otherwise noted.

3.3.1.Q.4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - (continued)

Example:

The Customer has a CSTEP II with a \$600,000 annual commitment level. The Customer wishes to terminate the existing CSTEP II and upgrade to a new \$1,200,000 CSTEP II. The Customer is in Month 6 of the annual commitment. In order to terminate the existing CSTEP II without liability, the Customer must have generated a minimum of \$250,000 in net usage (\$600,000 ÷ 12 months x 5 completed months). If the Customer has not generated a minimum of \$250,000 in net usage and discontinues the existing CSTEP II, the Customer will be liable for the Discontinuance Liability as specified in Section 3.3.1.Q.5. following unless the Customer pays the difference between the actual billed revenue applicable to the annual revenue commitment and the \$250,000 of pro-rated annual commitment.

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In the event that a Customer makes a payment as described above and, at the end of the first year of the new plan has provided revenue in excess of the minimum commitment for that year, AT&T will refund to the Customer the excess revenue received, up to the amount of the Customer's payment.

Ny

Example 1

A Customer makes a \$100,000 payment in order to terminate a \$600,000 CSTEP II, and moves to a CSTEP II with a commitment level of \$1,200,000. At the end of the first 12 months of the new plan, the Customer provides \$1,400,000 in revenue under the plan. AT&T will refund \$100,000 to the Customer.

Example 2

At the end of the first 12 months of the new plan, the Customer in Example 1 provides \$1,250,000 in revenue under the plan. AT&T will refund \$50,000 to the Customer.

Ny

* CSTEP II Plans in effect on or prior to June 17, 1994 are not subject to condition 2, preceding.

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Ny

The conditions referred to in 1, preceding, are:

Ny

- Notice of cancellation of the term plan order is received before the last day of the current month, i.e., term plan order is received January 3, cancellation of the order notice must be received before January 31, or;
- The Customer orders a new CSTEP II from the Company with a revenue commitment exceeding the original commitment. Discontinuance of the former term plan and installation of the new Term Plan must be done concurrently. This condition applies only to Customers who have ordered an AT&T 800 Customer Specific Term Plan II prior to June 10, 1993, or;

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Certain material previously found on this page can now be found on Page 61.19.2.

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3.3.1.Q.4. Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II-Without Liability - (continued)

- The Customer replaces its existing Customer Specific Term Plan II (either alone or in combination with other AT&T 800 Service term plans) with a new Customer Specific Term Plan II with a total revenue commitment (annual revenue commitment times the number of years in the term) over the term of the new plan equal to or exceeding the sum of the remaining monthly (sum of the full months remaining) and/or annual (the annual revenue commitment divided by 12 times the number of full months remaining) revenue commitment of the existing AT&T 800 Service term plan(s) being canceled and replaced with the new Customer Specific Term Plan II. Discontinuance of the former term plan(s) and start of the new Customer Specific Term Plan II must be done concurrently, or;
- The Customer replaces its existing AT&T 800 Customer Specific Term Plan II (either alone or in combination with other AT&T 800 Service term plans) with a new AT&T combined outward calling and inward calling discount plan in a new AT&T term plan (as specified in AT&T Tariff F.C.C. No. 1 or in AT&T Tariff F.C.C. No. 16, Section 10) with a total revenue commitment over the term of the new plan equal to or exceeding the sum of the remaining monthly and/or annual revenue commitments on the existing AT&T 800 Service term plan(s) being canceled and replaced with the new AT&T term plan (as specified in AT&T Tariff F.C.C. No. 1 or in AT&T Tariff F.C.C. No. 16, Section 10). Discontinuance of the former term plan(s) and initiation of the new term plan must be done concurrently, or;
- The Customer subscribes to an AT&T Contract Tariff. The Contract Tariff must have a total 800 service revenue commitment exceeding the sum of the remaining annual revenue commitment for the CSTP II which the Customer is terminating. Discontinuance of the former term plan and subscription to the new Contract Tariff must be done concurrently, or;

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Next page see...

**November 9th 1995 Prospective Changes
to Discontinuance Without Liability (Restructures)**

Effective: November 9, 1995

November
9th 1995

** All material on this page is new. **

2.5.18. Discontinuance Without Liability - (continued)

A. The Customer must provide written notice of discontinuance of the Old Plan to AT&T as provided in 1. and 2., following. If AT&T provides written notice to the Customer that its order for the New Plan is not accepted, the notice of discontinuance provided by the Customer shall be void.

1. If the Customer is AT&T's customer of record for the Old Plan on the day the Customer places its order for the New Plan, or at any time during the 30 preceding days, the Customer must provide written notice of discontinuance of the Old Plan on or prior to the day it places its order for the New Plan.

2. If the Customer is not AT&T's customer of record for the Old Plan on the day the Customer places its order for the New Plan, or at any time during the 30 preceding days, the Customer must provide written notice of discontinuance of the Old Plan, together with a valid Transfer of Service form submitted in accordance with Section 2.1.8., preceding, within three (3) days (excluding Saturdays, Sundays, and federal holidays) after AT&T provides written notice to the Customer that its order for the New Plan has been accepted. Pursuant to Section 2.1.8., preceding, AT&T may not agree to the transfer of assignment of an Old Plan that is subject of a defective Transfer of Service form. In such event, the Customer may provide a valid Transfer of Service form for the same Old Plan within ten (10) days after the date on which AT&T provides its written statement of reasons for not accepting the Transfer of Service form.

B. The service provided under the Old Plan must be replaced with service provided under the New Plan. The termination date of the Old Plan and the initial service date of the New Plan must be the same day, and all rates, terms and conditions of the Old Plan will remain in effect until that day, provided that the Old Plan shall not remain in effect beyond the expiration of its term. If the Customer cancels its order for the New Plan after the termination date of the Old Plan, the discontinuance of the Old Plan will be a discontinuance with liability, and termination charges will apply pursuant to the terms of the Old Plan.

* C. If the Old Plan includes an annual revenue commitment, a Shortfall Charge will apply as provided in 1., following. The Shortfall Charge will not apply in connection with the discontinuance of a CSTP II that was ordered on or prior to June 17, 1994, or the discontinuance of an Old Plan (other than a CSTP II) that was not in service as of December 9, 1995 or earlier.

1. If the Old Plan includes an annual revenue commitment, the Customer must satisfy the pro-rated annual revenue commitment as of the termination date of the Old Plan. The pro-rated annual revenue commitment is the annual revenue commitment of the Old Plan, divided by twelve and multiplied by the number of months in the current plan year for which bills have been issued (as of the termination date of the Old Plan). If the Customer has not met the pro-rated annual revenue commitment, the Customer must pay a Shortfall Charge calculated in the same manner as specified for a failure to meet the annual commitment under the Old Plan, but based on the difference between the prorated annual revenue commitment and the actual charges applicable to satisfy the annual revenue commitment incurred during the months in the current plan year for which bills have been issued (of the termination date of the Old Plan).

PRE June 17th 94 ISSUE →

Printed in U.S.A.

2C Shortfall does not

APPLY ON A DISCONTINUANCE

IE Restructuring of an existing CSTP II PLAN,
till end of 3 year term

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Pre 6/17/94
terms &
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PASS on the
first post
November 9th
1995
restructure

Next 5 pages see...

**August 29th 1996 Prospective Changes
to Discontinuance Without Liability (Restructures)**

AT&T COMMUNICATIONS

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TARIFF F.C.C. NO. 2

Original Page 34.7.1

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2.5.18. Discontinuance Without Liability - (continued)

1. If the New Plan is a VTNS Option, the termination date of the Old Plan and the date on which Substantially Complete Installation of the VTNS Option is attained (or such earlier date as the Customer may designate, no earlier than the date of initial service under the VTNS Option) must be the same day, and all rates, terms and conditions of the Old Plan will remain in effect until that day, provided that the Old Plan shall not remain in effect beyond the expiration of its term. If the Customer has designated a date that is earlier than the Substantially Complete Installation date, and cancels its order for the New Plan after the termination dated of the Old Plan but before the Substantially Complete Installation date of the VTNS Option, the discontinuance of the Old Plan will be a discontinuance with liability, and termination charges will apply pursuant to the terms of the Old Plan. N

C. If the Old Plan includes an annual revenue commitment, a Shortfall Charge will apply as provided in 1., following. The Shortfall Charge will not apply in connection with the discontinuance of a CSTP II that was ordered on or prior to June 17, 1994, or the discontinuance of an Old Plan (other than a CSTP II) that was not either ordered on or prior to August 29, 1996 or in service on or prior to September 1, 1996. M

1. If the Old Plan includes an annual revenue commitment, the Customer must satisfy the pro-rated annual revenue commitment as of the termination date of the Old Plan. The pro-rated annual revenue commitment is the annual revenue commitment of the Old Plan, divided by twelve and multiplied by the number of full billing months in the current plan year (as of the termination date of the Old Plan). If the Customer has not met the pro-rated annual revenue commitment, the Customer must pay a Shortfall Charge calculated in the same manner as specified for a failure to meet the annual commitment under the Old Plan, but based on the difference between the prorated annual revenue commitment and the actual charges applicable to satisfy the annual revenue commitment incurred during the full billing months elapsed in the current plan year (of the termination date of the Old Plan). M
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2.5.18.C. Discontinuance Without Liability - (continued)

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D. The New Plan must have a term commitment that is equal to or longer than the remaining term commitment of the Old Plan. If more than one plan is being discontinued, the New Plan must have a term commitment that is equal to or greater than the longest remaining term of the plans being discontinued.

E. The New Plan must have an average monthly revenue commitment that is equal to or greater than the average monthly revenue commitment of the Old Plan, as calculated pursuant to 1. and 2., following. If the New Plan is a Contract Tariff, only the 800 Service revenue commitments under the Contract Tariff are used to calculate the average monthly revenue commitment of the New Plan. If more than one plan is being discontinued, the New Plan must have an average monthly revenue commitment that is equal to or greater than the sum of all average monthly revenue commitments of the plans being discontinued.

1. The average monthly revenue commitment of a plan is equal to the total revenue commitments over the full term of the plan, divided by the number of full months in the full term of the plan. If a ramp-up period is part of the term, the ramp-up period is not included in the computation of the average monthly revenue commitment. If the New Plan is a Contract Tariff, only the 800 Service revenue commitments are used to calculate the average monthly revenue commitment of the New Plan.

Examples:**Example 1**

A Customer is currently taking service under a CSTP II with a 3-year term commitment and a \$240,000 annual commitment, with 18 months remaining in the term commitment (the CSTP II was not ordered on or prior to August 29, 1996 or in service on or prior to September 1, 1996). The Customer can discontinue this CSTP II without liability in conjunction with an order for a new replacement CSTP II with a term commitment of 24 months (i.e., CSTP II Option A) and a revenue commitment of \$240,000 per year. The term commitment of the New Plan must be at least 18 months (the remaining term of the existing CSTP II); 24 months is the shortest available CSTP II term commitment (CSTP II Option A) that equals or exceeds 18 months. The average monthly revenue commitment of the New Plan must be at least \$20,000 (the total revenue commitment over the full term of the existing CSTP II, divided by the number of full billing months in the full term of the CSTP II is $\$720,000 \div 36$, or \$20,000); the CSTP II Option A

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offers an Annual Revenue Commitment of \$240,000 (which corresponds to a \$20,000 average monthly commitment).

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2.5.18.E.1. Discontinuance Without Liability - (continued)

Example 2

A Customer is currently taking service under both a CSTP II with a 3-year term commitment and a \$240,000 annual commitment, with 18 months remaining in the term commitment (as in Example 1), and an AT&T Term and Volume Plan (TVP) pursuant to Tariff F.C.C. No. 1 with a 3-year term commitment and a \$300,000 annual commitment, with 15 months remaining in the term commitment. The Customer can discontinue the CSTP II and the TVP without liability in conjunction with an order for a new replacement AT&T UNIPLAN Term Plan pursuant to Tariff F.C.C. No. 1 with a term commitment of 24 months and a revenue commitment of \$50,000 per month. The term commitment of the New Plan must be at least 18 months (the remaining term of the CSTP II); 24 months is the shortest available AT&T UNIPLAN term commitment that equals or exceeds 18 months. The average monthly revenue commitment of the New Plan must be at least \$45,000 $((\$720,000 \div 36) + (\$900,000 \div 36))$; \$50,000 is the lowest available AT&T UNIPLAN Term Plan Net Monthly Commitment that equals or exceeds \$45,000.

Example 3

A Customer is currently taking service under an LSTP II Plan with a 24-month term commitment in conjunction with an order for a new replacement LSTP II with a term commitment of 18 months and a revenue commitment of \$1,500 per month. The term commitment of the New Plan must be at least 16 months (the remaining term of the LSTP II); 18 months is the shortest available LSTP II term commitment which equals or exceeds 16 months. The average monthly revenue commitment of the New Plan must be at least \$1,500 per month; the LSTP II has a \$1,500 Net Monthly Usage Revenue Commitment.

2. If a plan has a usage commitment (i.e., a commitment specified in minutes of use), that commitment will be converted to a revenue commitment by multiplying the usage commitment by a factor of \$0.12 per minute.

F. The following are exceptions and additional conditions to the rules specified in A. through E., preceding. The chart at the beginning of this Section 2.5.18. identifying which New Plans can provide a basis for discontinuance without liability of which Old Plans applies in all events.

1. **CSTP II Exception** - A Customer of a CSTP II that was either ordered on or prior to August 29, 1996, or in service on or prior to September 1, 1996, may discontinue without liability that Old Plan in conjunction with an order for a New Plan, subject to the conditions specified in (a), following, in lieu of the conditions specified in Sections 2.5.18.D. and E., preceding. The Customer also must satisfy the conditions specified in Sections 2.5.18.A. through C., preceding, except as otherwise provided in (b) and (c), following.

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2.5.18.F.1. CSTP II Exception - (continued)

(a) The total revenue commitment over the full term of the New Plan must be greater than or equal to the remaining annual revenue commitment of the Old Plan. The remaining annual revenue commitment of the Old Plan is the Annual Revenue Commitment divided by 12 times the number of full months remaining in the term of the Old Plan. If the New Plan is a Contract Tariff, only the 800 Service revenue commitments under the Contract Tariff are used to calculate the total revenue commitment of the New Plan. If more than one plan is being discontinued, the total revenue commitment over the full term of the New Plan must be equal to or greater than the sum of the remaining monthly revenue commitments (the monthly revenue commitment times the number of months remaining) and/or annual revenue commitments (the annual revenue commitment divided by 12, times the number of full months remaining) of the plans being discontinued.

(b) Section 2.5.18.C. does not apply to a CSTP II that was in effect or on order on or prior to June 17, 1994.

(c) If the Customer has paid a Shortfall Charge pursuant to Section 2.5.18.C. in conjunction with its discontinuance of a CSTP II and replacement of the CSTP II with a New Plan, and if, at the end of the first year of the term of the New Plan, the Customer has incurred charges in excess of the New Plan minimum revenue commitment for that year, AT&T will provide a "credit" to the Customer for the amount by which such incurred charges under the New Plan exceeded such

commitment, in an amount not to exceed the amount of the paid Shortfall Charge.

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Certain material on this page formerly appeared on Page 34.9.

the carrier (e.g., particular discount levels) cease to be effective. The tariff also makes clear that a "new" plan must replace the old plan, with new terms and conditions to which both the customer and the carrier are bound. Accordingly, the Grandfather Clause merely relieved customers of pre-June 17, 1994 CSTP II Plans from the second "requirement" of shortfall charges when they discontinued their pre-June 17, 1994 plan and concurrently entered into a new plan; it did not retain any terms or conditions of the old plan, and in particular there is no language in the tariff to support any interpretation that the "new" plan retained the subscription date of the old plan for any purpose whatsoever. To the contrary, any "new" plan subscribed to concurrently with the cancellation of the pre-June 17, 1994 plan is not, by definition, a "CSTP II Plan in effect prior to June 17, 1994."

This construction of the plain meaning of the tariff is supported by the intent expressed by the affected parties when the Grandfather Clause took effect. The resellers themselves, who intervened in AT&T's tariff proceeding clarifying the application of shortfall charges as a condition of discontinuance without liability, argued for a grandfather clause that would exempt plans entered into before the effective date of AT&T's clarifications: "AT&T must, at a minimum . . . insert . . . a provision that limits the application of the new language to plans (not customers) executed after the effective date of the transmittal."¹⁷ (emphasis added). Thus, they conceded that

¹⁷ PSE's Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508, filed Feb. 25, 1994, at 4-5; see also, GE

(footnote continued on next page)

shortfall charges could be imposed on those same customers for "those plans entered into after the effective date of the transmittal establishing the change" (emphasis in the original).¹⁸ Another reseller argued for a "'Fresh Look' opportunity to terminate their

CSTP II plan commitments without liability before the fundamental terms of those commitments are changed out from under them."¹⁹ Consistent with these proposals, AT&T revised its pending tariff to include the Grandfather Clause²⁰ and the Commission allowed the tariff clarifications to take effect.²¹ As there is no dispute that "new" plans are "entered into" after June 17, 1994, the Commission has ample basis to rule that only CSTP II Plans that were subscribed to prior to June 17, 1994 may be discontinued without shortfall liability, and not the "new" plans that were concurrently entered into after June 17, 1994 to replace those plans.

(footnote continued from previous page)

Capital Communications Services Corporation's Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508, filed Feb. 25, 1994, at 4-5. The petitions cited herein are attached as Exhibits B (PSE), C (GECCS) and D (Furst Group).

¹⁸ Id.

¹⁹ The Furst Group, Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508, filed Feb. 25, 1994, at 5.

²⁰ Reply of American Telephone and Telegraph Company, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508, filed Feb. 28, 1994, at 2.

²¹ Order, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508, released June 17, 1994.

"pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." No factual issues surround this question. The express language of the relevant tariff provision, AT&T Tariff F.C.C. No. 2, Section 3.3.1.Q.4, exempting a "CSTP II Plan in effect prior to June 17, 1994," is clear: this section merely relieved customers of pre-June 17, 1994 CSTP II Plans from shortfall charges if they discontinued their pre-June 17, 1994 plan and concurrently entered into a new plan.

The "new" plan did not retain any terms or conditions of the old plan, and in particular there is no language in the tariff to support any interpretation that the "new" plan retained the subscription date of the old plan for any purpose whatsoever. To the contrary, any "new" plan subscribed to concurrently with the cancellation of the pre-June 17, 1994 plan is not, by definition, a "CSTP II Plan in effect prior to June 17, 1994." This plain meaning of the tariff was endorsed by the very reseller community to whom (along with all other customers) it was to be applied.

AT&T thus supports the issuance of a Declaratory Ruling that shortfall charges may be imposed where, as here, post-June 17, 1994 CSTP II replacement plans are discontinued or reach an anniversary date.

Before the FCC 96-341

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Competition in the Interstate)	CC Docket No. 90-132
Interexchange Marketplace)	
)	
)	

ORDER

Adopted: August 12, 1996

Released: August 20, 1996

By the Commission:

1. In the Interexchange Proceeding, the Commission adopted certain 800 and inbound service bundling restrictions, including a "fresh look" requirement permitting AT&T Corp. (AT&T) customers with Tariff 12 packages that included inbound service to terminate service without termination liability within 90 days of the time 800 numbers became portable. AT&T filed a petition for a declaratory ruling, asking us to extend the 800 and inbound service bundling restrictions adopted in the Interexchange Proceeding, including the fresh look requirement, to all interexchange carriers. In the Interexchange Order, we found that the rationale used to justify the 800 and inbound service bundling restrictions did not extend to other interexchange carriers and denied AT&T's petition.

2. In May 1993, AT&T filed a petition for judicial review of the Interexchange Order insofar as it affirmed the Commission's fresh look policy. Because the fresh look period expired in July 1993, and was not extended by the Commission, AT&T subsequently filed a motion asking the court to dismiss its petition for review and to vacate the Interexchange Order as moot. On April 19, 1994, the court granted the motion to dismiss and remanded the proceeding to the Commission with instructions to vacate the Interexchange Order.

3. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that the underlying agency order, Interexchange Order, 8 FCC Rcd 2659 (1993), IS VACATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Post-It® Fax Note 7871		Date 4-24	# of pages 1
To Larry Shipp		From Andrea Anton	
Co./Dept.		Co.	
Phone #		Phone #	
Fax # 5-726-2707		Fax #	

April 23, 1996

TO: Larry Shipp
 FROM: Andrea Anton
 SUBJECT: SHORTFALL

Larry,

Recently we have had a great deal of activity regarding the AT&T CSTEP II term plans subscribed to by Combined Companies Inc. (CCI). In the course of our examination of two of these plans, Plans 2829 and 3124, significant shortfall is eminent.

Both plans have an anniversary date of April 1, 1996. This means AT&T will count usage from the May 1, 1995 invoice (April usage) to April 1, 1996 invoice (March usage) towards the retirement of your annual commitment to us. My preliminary findings show an estimated shortfall of \$11,200,000.00 on Plan 2829 and \$8,200,000.00 on Plan 3124. I have used the following calculations to come to this estimate:

Plan 2829

Anniversary:	4/1/96	
Commitment:	\$21,000,000	
Total Term Plan Revenue (3/95 to 2/96):	\$8,394,967.14	
Estimated Plan Revenue for 3/96	705,032.86	
Estimated Plan Revenue for 4/96	<u>700,000.00</u>	
Total Actual & Estimated Revenue	\$9,800,000.00	
Estimated Shortfall		\$11,200,000.00

Plan 3124

Anniversary:	4/1/96	
Commitment:	\$12,000,000	
Total Term Plan Revenue (3/95 to 2/96)	\$3,281,799.00	
Estimated Revenue for 3/96	258,200.87	
Estimated Revenue for 4/96	<u>260,000.00</u>	
Total Estimated Revenue	\$3,800,000.00	
Estimated Shortfall		\$8,200,000.00

Prior Month Revenue(s) Used for Estimate

<u>Month</u>	<u>Plan 2829</u>	<u>Plan 3124</u>
1/96	\$543,124.13	\$196,651.01
2/96	612,772.03	210,534.59

The Total Term Plan Revenue figures were obtained from the March 1996 RVPP report (2/96 Invoice). The estimated revenues for March and April 1996 were based on a liberal application of prior months actual revenue. The actual revenue figures for March and April 1996 will be used to determine the final shortfall amounts. This amount will appear on your June 1, 1996 invoice.

<In addition it appears two of your other plans, Plans 2430 and 3524, will also be in shortfall on their June 1, 1996 anniversaries. Using the same methodology I estimate Plan 2430 to have a \$5,000,000.00 shortfall and Plan 3524 a \$3,800,000.00 shortfall.>

If you have any questions regarding my findings, or any of the plans themselves, please call me on 510-224-6560.



cc: C. Fash
D. Hollenbeck
J. Andrews
T. Schaeffer
O. Booker
R. Williams

Combined Companies, Inc.

April 25, 1996

*Ms. Andrea Anton
AT&T
4450 Rosewood Drive
Pleasanton, CA 94583*

Delivered Via Facsimile

Dear Andrea,

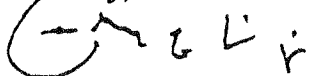
I have just this date received your fax, dated April 23, which arrived here late in the evening on April 24th, in which it was suggested that Combined Companies, Inc. (CCI) plan(s) Nos. 2829 and 3124 are somehow in danger of imminent shortfall.

Andrea, I believe this overlooks the fact that CCI has already restructured these plans (as well as Plan Nos. 2430 and 3524) as it has done on numerous occasions before without any problem (see copy of previously submitted Network Services Commitment forms following).

Of note, as you requested, I tried to call you (if I had a problem) and received your voice mail indicating you were basically out of pocket for the next two weeks. I'm surprised you were away, and equally surprised you didn't call me and advise me of your fax, and thereby give me a chance to comment before sending it. Perhaps we could have settled the issue over the phone.

At any rate, let's clear this up like we did the last shortfall notice, which also turned out to be incorrect. May I hear back from you at your earliest convenience.

Sincerely,



Larry G. Shipp

/LGS

Combined Companies, Inc.


May 23, 1996

Ms. Andrea Anton
AT&T
4450 Rosewood Drive
Room 5388
Pleasanton, CA 94583

Delivered Via Facsimile

Dear Andrea,

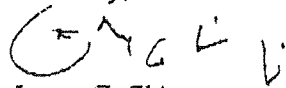
First, thank you for returning my call, and as well, giving me a "heads-up" on what AT&T is planning to do with regard to Combined Companies, Inc.'s (CCI) supposed shortfall on its CSTP II plans(s) (Nos. 2829, and 3124).

 As I mentioned to you today, and previously advised you via letter on April 25, 1996 (copy enclosed), CCI was entitled, under its agreements, and the tariffs governing those agreements, to restructure its plans - which it did in a timely and appropriate manner. Therefore, pursuant to AT&T's on tariffs, THERE IS NO SHORTFALL ASSOCIATED WITH THE PLANS IN QUESTION. I have, also, addressed this very issue in a letter to Mr. Carl Williams, AT&T District Manager, on May 17, 1996.

Please be advised that CCI views AT&T proposed charge back to CCI, and/or its customers, as a serious mistake; and therefore, if enacted, an intentional and willful breach of AT&T's contractual obligations to CCI. I therefore urge AT&T to investigate this issue further, prior to taking this highly inappropriate unilateral action.

In closing, and as mentioned today, CCI has not received its RVPP Reports for any of its other plans (other than 2829) this month. And therefore respectfully advises AT&T that it has not received anything approaching formal notice of any pending shortfall on plan 3124. Also, I am not sure that CCI will have any "input" in the process of how it wants this invalid shortfall "allocated", since CCI absolutely believes it does not owe it! However, I will advise you if we have a position on that issue by Tuesday, May 28, 1996 - which you agreed was OK.

Sincerely,



Larry G. Shipp
President

/LGS

Enclosures

19:

Attachment 3

Combined Companies, Inc.

June 18 1996

Mr. Carl Williams
 AT&T
 5000 Hadley Road
 South Plainfield, NJ 07080

Delivered Via Facsimile

Dear Mr. Williams:

I have been advised by our customer service representatives, that in their fielding of calls today from end-users, that AT&T has posted a "true-up charge" on our end-users invoices. I am also advised that AT&T is informing these very disgruntled customers that CCI instructed AT&T to put these charges on the invoice. This statement is simply not true, and AT&T knows that to be the case.

I encourage you to correct this misrepresentation immediately; and have at least the courage of your convictions to tell the end-users the truth. AT&T took this action because it wanted too; and because it could! And, no matter that this destructive action, which if found to be incorrect, will have served no other purpose, than for AT&T to have put another bullet into a business it has already killed!

Let me restate, once again, that these plans, in which these customers were located, are plans that CCI was allowed, pursuant to AT&T filed FCC Tariff(s) to restructure - which we did. Therefore, CCI was, and is, in full compliance with the "terms and conditions" of our tariffed obligations to AT&T. But, even if AT&T disagrees as to the merits of our restructure; or if it disagrees with our position that shortfall is inappropriate in this instance, clearly the right thing for AT&T to do was to allow the legal processes, which we began over 15 months ago, to reconcile these disputes. Not through the "kill em at any cost" strategy that AT&T is seemingly employing.

It would appear, however, that AT&T has no desire to do the right thing; rather it only has the desire to put companies like CCI out of business - through its continued uneven application of tariffs, and often blatant discrimination. While at the same time, attempting to starve our will to resist, by the unilateral withholding of monies that are due us - without any due process.

Mr. Williams, if AT&T measures the success of its position by the aggravation it has caused my company, or my customers, as we are driven out of business; or if success is measured by the number of companies that have rolled-over as the AT&T juggernaut comes marching through - then I suppose the company has had a good year. But, on the other hand, even

02/07/1995 21:44 3057262787

PAGE 07

ID:

JUN 25 '96

9:50 No.002 P.03

Mr. Carl Williams
AT&T
June 18 1996

AT&T will have to stand-up one day to the scrutiny of what was truly the right and wrong thing to do beginning back in December 1994, and thereafter, in its dealings with CCI: just as will CCI. This will be the day when someone other than AT&T - like a jury, a court, or the Federal Communications Commission - will decide who was right, and who was wrong.

I look forward to that day.

Sincerely,



Larry G. Shlpp

LGs

REVR PAGE

ID: B088888888

JUL-03-96 15:43 FROM: AT&T 295 N. MAPLE LANE

Combined Companies, Inc.

June 18, 1996

Ms. Jan Binch
AT&T
Account Inquiry Center (AIC)
Houston, TX

Delivered Via Facsimile

Dear Ms. Binch:

I am writing this letter to memorialize a series of disturbing events that have come to my attention that apparently involve your offices and/or other AT&T billing inquiry centers.

Our customer service representatives who have been fielding calls from irate end-users owing to AT&T's unilateral posting of "true-up" charges on their invoices, have been advised by these end-users of the following:

1. "that CCI is responsible for the "true-up" charges being placed on the end-user bill and directed AT&T to place them there";
2. "that AT&T legal will contact (the end-user) directly within 5 to 7 days of AT&T position on this issue";
3. "that (the end-user) does not have to worry about paying these charges, because they end up being the responsibility of the aggregator";
4. "ignore the charges, I'll send you a revocation of billing letter, and you can come back to AT&T directly";

As you might imagine, these statements quoted directly from end-users, that have called our customer service offices in New Jersey to find out "what's going on", are more than troubling if found to be true. *

Let me set the record straight.

Combined Companies, Inc. (CCI), is the plan holder for certain AT&T tariffed plans, including those affected by the supposed "true-up" charges in question. However, the plans are not in shortfall; and therefore are not subject to "true-up" charges. In fact, to the contrary.

CCI exercised its rights under the AT&T filed FCC tariffs governing these plans, and restructured these plans prior to any tariffed requirement for "true-up". This action, which has been routinely accomplished by numerous AT&T customers (both resellers and commercial customers alike), was addressed, and provided for, in tariff filings by AT&T back in 1994, when it grandfathered this right *

Ms. Jan Binch
AT&T
June 18, 1996
Page 2

for all plans in existence prior to June 14, 1994 (which included all of CCI's plans). Specifically the tariffs allow for the term plan(s) held by CCI (or any other customer with a pre-June 14th plan) to be extended, without penalty of any kind - thereby avoiding any tariffed requirement for annual "true-up".

It is therefore very disturbing to CCI that AT&T would so insensitively impose a shortfall/true-up charge on CCI's customers, without the conclusion of due process that was begun between our companies some 15 months ago. Especially when there is more than a "slight chance" that AT&T might be found to be wrong in this instance.

You should know, not that it will necessarily change your marching orders, that CCI requested AT&T not to rush into this decision, and thereby avoid the very problems that its unilateral actions have now created.

And it isn't bad enough that we have to deal with end-users who are being hit with these manufactured "true-up" charges, our customers are also advising us that AT&T is telling them that AT&T will have a "written response" to them directly about this issue within 5 or 7 days. Let me stress the inappropriateness of AT&T's continuing mis-information campaign with our customers.

Be advised that CCI requests, in the strongest way, that NO CONTACT occur with our customers, other than referring them to us (which is AT&T's procedure when questions arise concerning a resellers customer).

Finally, we are also advised that AT&T is denying access to the account inquiry center, and advising our customers that they must "fax their complaint" into the center (as opposed to fielding their calls). This is totally unacceptable and blatantly inappropriate. No end-user customer of CCI's should be denied access to the billing center to raise a question (or complain, if appropriate) about AT&T's practices and customer service for end-users within a CCI plan. They are entitled to the very same level of customer service that is available for any of AT&T's other customers. Please ensure that this remains the case.

Please advise me by return facsimile as to AT&T's compliance with our requests.

Sincerely,



Larry G. Shipp

/LGS

Combined Companies, Inc.

January 22, 1997

Ms. Sharon DeMills
AT&T Specialized Markets
795 Folsom St., Room 308
San Francisco, CA 94107

Delivered Overnight Delivery

Dear Ms. DeMills:

Mr. John Andrews, Market Manager, AT&T Specialized Markets has identified you as our "new" Account Manager. Accordingly, this letter is Combined Companies, Inc.'s (CCI) follow-up to its February 28, 1996 and April 23, 1996, letters to Ms. Andrea Anton, our previous Account Manager, whereby CCI again submits its order to have an EXTENSION OF TERM COMMITMENT granted on each of the following Customer Specific Term Plan IIs (CSTP IIs) that are presently active and/or in force:

Plan ID #'s: 3663, 2430, 2829, 3524, and 3124

This order for an Extension of Term Commitment is submitted as provided for within AT&T FCC filed Tariff No. 2, 2.5.7.

This on-going, and yet un-acted upon order, is necessitated by the extraordinary traffic erosion suffered by these plans over the past year and a half (\$4.1 Million collectively per month, to \$550,000 per month today) thereby creating circumstances that are materially affecting these plans that are now, and remain, beyond CCI's control, and thus a need for a term extension. This order to extend these plans is neither inconsistent with the intent of the tariff, nor unusual for AT&T - which routinely grants business downturn extensions to its customers. The traffic erosion is a direct result of AT&T's unlawful failure to provision the accounts associated with the above referenced plans to a higher discount plan provided for by Contract Tariff No. 516, as ordered by CCI in January 1995, as well as the direct solicitation and tortuous interference by AT&T with CCI's customers.

Should AT&T continue to unlawfully refuse to extend these term plans, CCI has enclosed herewith a Network Services Commitment form(s) to facilitate the timely restructure and continuation, without penalty of any kind, of a "grandfathered" pre-June 17, 1994 plan - plan No. 3663. This additional precaution is being taken by CCI to avoid any problem associated with this plans, that might occur as a result of AT&T's on-going refusal to process any of our legal order(s) dealing with these plan(s).

Ms. Sharon DeMills
AT&T
January 22, 1997
Page 2

In closing, and notwithstanding this order for an Extension of Term Commitment and/or Restructure, CCI does not rescind or cancel any previously submitted order and/or Transfer of Service Agreement (TSA) by CCI directly, or as Agent for Winback and Conserve Program Inc. (Winback), to AT&T for discontinuance of these plans into Public Service Enterprises of PA, Inc. (PSE) Contract Tariff No. 1470, or movement of traffic from these plans into PSE's Contract Tariff No. 516 - which is the subject of an existing legal action between CCI and AT&T in Federal District Court and before the Federal Communications Commission (FCC).

Sincerely,



Larry G. Shipp
President

/LGS

Enclosures - Network Services Commitment Form - Plan ID #3663

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707
Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Mr. Chuck Helein, Esq.
Company: Helein & Associates
Address:
Date: January 23, 1997
Time: 11:56 AM

Message: Important - Please Deliver to Mr. Chuck Helein, Esq.

Chuck - the following is for your files.

As you will note, we have submitted a restructure order (and Extension of Term Plan request) to AT&T on Plan ID #3663 which completes its 23rd month of service this month. The revised commitment level - based on commitment remaining is \$3,250,000 (or \$1,200,00 per year, for three (3) years).

If you have any questions - please call (as I will not be sending in this order until 6PM EST today).

Enclosure(s) -

cc: Mr. Al Inga, Winback & Conserve



Combined Companies, Inc.

April 28, 1997

Mr. John Andrews
AT&T
55 Corporate Drive
Bridgewater, NJ 08807

Delivered Via Overnight Delivery

Dear Mr. Andrews:

Combined Companies, Inc. (CCI), by this letter, hereby submits its continuing order to facilitate the timely restructure/upgrade, without penalty of any kind, effective April 30, 1997, with a start date of May 1, 1997, CCI's pre-June 17 plans - Plan Nos. 3524 and 2829, as well as Plan Nos. 3124 and 2430.

This order is consistent with AT&T practices over the last eight years and filed pursuant to CCI's tariffed rights under the tariffs to which it subscribes.

In closing, and notwithstanding these orders for reduction of commitment and/or Upgrade/Restructure, CCI does not rescind or cancel any previously submitted order and/or Transfer of Service Agreement (TSA) by CCI directly, or as Agent for Winback and Conserve Program Inc. to AT&T for discontinuance of these plans into Public Service Enterprises of PA, Inc. (PSE) Contract Tariff No. 1470. Or the right to movement of end-user traffic from these plans into PSE's Contract Tariff No. 516 - which is the subject of an existing legal action between CCI and AT&T in Federal District Court and before the Federal Communications Commission.

Sincerely,

Larry G. Shipp
President

/LGS
Enclosures

To: AL INQA

cc: Jeff
SHAW

Combined Companies, Inc.

Confidential Memorandum

To: Mr. Al Inga
Winback & Conserve Program, Inc.

Fm: Larry G. Shipp *LS*

Date: April 29, 1997

Re: CSTP II Term Plan Extensions

Al - please provide me any comments on the DRAFT letter to John Andrews by 4PM today's date, so that I can evaluate any comments for possible inclusion in my letter to Mr. Andrews.

I must have your comments (as well as those of Chuck Heline and your other attorneys) by 4PM so that I can ensure this the letter gets out to John today (for overnight delivery).

Also - please see the following letter that I received today from AT&T dealing with the placing of "shortfall" on Plan No. 3663 - in spite of our restructuring; and despite our pending declaratory ruling before the FCC (sort of reminds me of the way Judge Roy Bean administered justice - kill 'em, then find out if they did it).

Finally, I will be meeting with the CCI board today to review the "lawyer contingency plan" you drafted. I will advise what our thoughts are immediately after the meeting.

SUMMARY

This Joint Petition for Declaratory Ruling is Petitioners' effort to seek rulings on the issue referred to the Commission by the United States District Court, District of New Jersey. The issue to be resolved by the Commission on this referral is the following:

Could AT&T refuse Petitioners' request to transfer the traffic but not the Customer Specific Term Plans to which that traffic was associated under AT&T's Tariff F.C.C. No. 2, Section 2.1.8, until AT&T was satisfied that the transfer was not designed to avoid the payment of shortfall and termination charges in violation of the antifraud provisions of the applicable tariff, including AT&T's Tariff F.C.C. No. 2, Section 2.2.4?

Because the Commission must make findings of fact (including on questions of intent and fraud) to resolve this issue, the issue referred to the Commission by the federal district court cannot be resolved in the context of a Petition for Declaratory Ruling; it must be resolved in the context of a complaint proceeding or other adjudication.

Petitioners avoid the fraud issue in their Joint Petition for Declaratory Ruling, both in their recitation of the facts and in their articulation of the rulings the Commission should issue. Those rulings are phrased in terms of whether or not Section 2.1.8 "or any other provision of AT&T's Tariff F.C.C. No. 2" prohibited the transfer. But the referral was broader; the Court's referral was not only to the interpretation of the relevant tariff provisions of AT&T's Tariff F.C.C. No. 2 but to their application to the factual circumstances of this case as well.

Notwithstanding the existence of disputed facts which precludes the declaratory rulings requested in the Joint Petition, the Commission should issue a declaratory ruling on the specific issue identified in its Public Notice; i.e., whether

"pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." No factual issues surround this question. The express language of the relevant tariff provision, AT&T Tariff F.C.C. No. 2, Section 3.3.1.Q.4, exempting a "CSTP II Plan in effect prior to June 17, 1994," is clear: this section merely relieved customers of pre-June 17, 1994 CSTP II Plans from shortfall charges if they discontinued their pre-June 17, 1994 plan and concurrently entered into a new plan. The "new" plan did not retain any terms or conditions of the old plan, and in particular there is no language in the tariff to support any interpretation that the "new" plan retained the subscription date of the old plan for any purpose whatsoever. To the contrary, any "new" plan subscribed to concurrently with the cancellation of the pre-June 17, 1994 plan is not, by definition, a "CSTP II Plan in effect prior to June 17, 1994." This plain meaning of the tariff was endorsed by the very reseller community to whom (along with all other customers) it was to be applied.

AT&T thus supports the issuance of a Declaratory Ruling that shortfall charges may be imposed where, as here, post-June 17, 1994 CSTP II replacement plans are discontinued or reach an anniversary date.